

1 MARK FANG, ATTORNEY AT LAW, APC
2 Mark Fang, Esq.; SBN 199073
3 William G. Short, Esq.; SBN 132479
4 215 East Daily Dr., Suite 9
Camarillo, CA 93010
Telephone: (805) 383-2788
Facsimile: (805) 388-9488

5 Attorney for Plaintiff EVERFLOW
TECHNOLOGY CORPORATION

6

7

8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA**

10 EVERFLOW TECHNOLOGY
11 CORPORATION, incorporated under the
12 laws of the Republic of China (Taiwan),

13 Plaintiff,

14 vs.

15 MILLENNIUM ELECTRONICS, INC., a
16 California corporation,

17 Defendant.

18

19 **Case No.: C 07-05795 JF (HRLx)**

20

21 **REPLY BRIEF IN SUPPORT OF
APPLICATION FOR ORDER OF WRIT
OF ATTACHMENT; DECLARATION
OF PETER CHIU**

22 **Date: February 8, 2008**

23 **Ctrm.: 3, Fifth Floor**

24 **Time: 9 a.m.**

25

26 **1. INTRODUCTION**

27 EVERFLOW has applied for a Writ of Attachment and has supplied compelling
28 evidence that it is owed no less than \$1,894,176.27. Defendant MEI has responded (four
weeks later) with an Opposition based on inadmissible evidence which, if anything,
unequivocally admits that MEI indeed owes EVERFLOW – and has owed for some time --
the sum of \$1,420,897.12.

This Court should grant the Application and order the issuance of the Writ in the
amount requested.

1 **2. MEI's OPPOSITION IS UNSUPPORTED BY ADMISSABLE EVIDENCE.**

2 MEI's two-paragraph Opposition was filed and served with a Declaration from James
3 Loro with one attached exhibit. As more specifically set out in Plaintiff's Objections to
4 Evidence filed concurrently herewith, the evidence in opposition is wispy. Mr. Loro
5 provides no foundational basis, other than that he is President of MEI. Further, and in the
6 same vein, the one exhibit attached to his declaration is given a name but is otherwise
7 offered without any foundation, authentication, or reason to treat it as anything other than
8 hearsay.

9 The failure to supply any admissible evidence is striking in that the few points
10 attempted in Mr. Loro's declaration all relate to fact-intensive "defenses" of sorts. For
11 instance, Paragraph 2 of the Loro Declaration asserts that the shipments were late "thereby
12 causing losses to MEI and to its customers." Though baldly asserted, the Declaration does
13 not provide any further clarification concerning what shipments were late, how late, what
14 kind of losses did this cause, how much were those losses, and who suffered those losses?
15 All of this information would be expected as a minimum factual basis for the bare assertion
16 made. In contrast, the Court is provided nothing further.

17 In the same way, assertions are made in the Declaration concerning the "holding [of]
18 tooling that has been paid for" and "product[s] that [were] never shipped" which lack the
19 required specificity. MEI's failure to supply even a modicum of admissible evidence in
20 support of its vague assertions forcefully argues, if nothing else, that MEI is likely to lose,
21 and that EVERFLOW is likely to succeed, in the underlying claim, a criterion for the Writ
22 Application.

1 **3. CONCLUSION**

2 EVERFLOW has requested a Writ in the amount of \$1,894,176.27, and has supplied
3 ample evidence to support this dollar amount and the likelihood of EVERFLOW's eventual
4 success at trial. In its thin Opposition, MEI succeeds only in admitting that it owes
5 EVERFLOW (in the form of significantly aged invoices) the amount of \$1,420,897.12.
6 EVERFLOW respectfully suggests that EVERFLOW has met its burden of proof and
7 requests that the Court grant its Application.

8

9

10 Dated: January 25, 2008

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



MARK FANG

1 **DECLARATION OF PETER CHIU IN SUPPORT OF APPLICATION**

2 1. I, Peter Chiu, am President of Everflow Technology Corporation (hereinafter
3 "Everflow"), a Tawainese corporation located in Taipei, Taiwan, R.O.C..
4 2. Evermodule Technology Corp. is Everflow's sister sharing common ownership.
5 3. Since Invoice No. EM070033, Everflow has also listed the name of this sister
6 company on Everflow's invoices to Millennium Electronics, Inc.

7
8 4. Attached as Exhibit L are true and correct copies of the last three invoices listed in
9 Exhibit K and on Defendants one exhibit. These are invoices numbered EM070067,
10 EM070066, and EM070066.

11 5. The amounts listed on the Defendant's exhibit are owed to Everflow.

12
13
14 I swear under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct and if sworn as a witness I could competently testify to the
16 facts stated herein.

17
18
19 Dated: January ___, 2008

(Original to be filed when received)

20 _____
21 PETER CHIU
22
23
24
25
26
27
28

Exhibit L



EVERMODULE TECHNOLOGY CORP.

TAIWAN : 5F-2, No.12, Lane 270, Sec.3, Beishen Rd., Shenkeng Shiang,
Taipei,
Taiwan 222, R.O.C.

CHINA : Ge Keng Industrial Zone, Heng Li Town, Dong Guan City,
Guang Dong Province, China
TEL : 86-769-372-7161 FAX : 86-769-372-7163

COMMERCIAL INVOICENO. EM070065Date : 09/26/07INVOICE of VGA COOLER

For account and risk of Messrs.

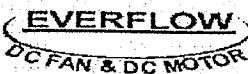
MILLENNIUM ELECTRONICS INC.671 E. BROKAW ROAD SAN JOSE, CA 95112Shipped by EVERMODULE TECHNOLOGY CORP.

| From | CHINA | to | HK | | | |
|---|--|-----------|--------|---------------|------------|--------|
| Marks&Nos. | Description of Goods | | | Quantity | Unit Price | Amount |
| MEI (IN DIA) PO:30191691 MEI P/N:MT2-10036 REV.A CUSTOMER P/N: 7120030500G Q'TY: 10PCS VENDOR:MEI INTERNATIONAL C/N:1-200 MADE IN CHINA | VGA COOLER R600 <u>MEI PO#0008121</u> | 2,000 PCS | 19.920 | USD 39,840.00 | | |
| | TOTAL : | 2,000 PCS | | USD 39,840.00 | | |

SAY TOTAL US DOLLARS THIRTY NINE THOUSAND EIGHT HUNDRED ANN FORTY ONLY ONLY.

EVERMODULE TECHNOLOGY CORP.

(Authorized Signature)



EVERMODULE TECHNOLOGY CORP.

TAIWAN : 5F-2, No.12, Lane 270, Sec.3, Beishen Rd., Shenkeng Shiang,
Taipei,
Taiwan 222,R.O.C.

CHINA : Ge Keng Industrial Zone, Heng Li Town, Dong Guan City,
Guang Dong Province, China
TEL : 86-769-372-7161 FAX : 86-769-372-7163

COMMERCIAL INVOICENO . EM070066Date : 09/27/07INVOICE of VGA COOLER

For account and risk of Messrs.

MILLENNIUM ELECTRONICS INC.671 E. BROKAW ROAD SAN JOSE. CA 95112Shipped by EVERMODULE TECHNOLOGY CORP.

| From | <u>CHINA</u> | to | <u>HK</u> | | |
|---|--|-----------|----------------------|------------|-----------|
| Marks&Nos. | Description of Goods | | Quantity | Unit Price | Amount |
| MEI (IN DIA) PO:30191691 MEI P/N:MT2-10036 REV.A CUSTOMER P/N: 7120030500G Q'TY: 10PCS VENDOR:MEI INTERNATIONAL C/N:1-180 MADE IN CHINA | VGA COOLER R600 MEI PO#0008121 | 1,800 PCS | 19.920 | USD | 35,856.00 |
| TOTAL : | | 1,800 PCS | USD 35,856.00 | | |

SAY TOTAL US DOLLARS THIRTY FIVE THOUSAND EIGHT HUNDRED AND FIFTY SIX ONLY.

EVERMODULE TECHNOLOGY CORP.

(Authorized Signature)



EVERMODULE TECHNOLOGY CORP.

TAIWAN : 5F-2, No.12, Lane 270, Sec.3, Beishen Rd., Shenkeng Shiang,
Taipei,
Taiwan 222,R.O.C.

CHINA : Ge Keng Industrial Zone, Heng Li Town, Dong Guan City,
Guang Dong Province, China
TEL : 86-769-372-7161 FAX : 86-769-372-7163

COMMERCIAL INVOICENO . EM070067Date : 09/28/07INVOICE of VGA COOLERFor account and risk of Messrs. MILLENNIUM ELECTRONICS INC.671 E. BROKAW ROAD SAN JOSE, CA 95112Shipped by EVERMODULE TECHNOLOGY CORP.

| From | <u>CHINA</u> | | to | <u>HK</u> | |
|--|--|-----------|----------|------------|-----------|
| Marks&Nos. | Description of Goods | | Quantity | Unit Price | Amount |
| MEI (IN DIA) PO:PVG-780300 MEI P/N:MT2-10020 REV.D CUSTOMER P/N: 7124024100G-RH Q'TY:30PCS VENDOR:MEI INTERNATIONAL C/N:1-84 MADE IN CHINA | VGA COOLER R580 <i>MEI PO#0008127</i> | 2,500 PCS | 15.800 | USD | 39,500.00 |
| MEI (IN DIA) PO:2100041656 MEI P/N:MT2-10020 REV.D CUSTOMER P/N: 7124024100GAYS Q'TY:30PCS VENDOR:MEI INTERNATIONAL C/N:85-151 MADE IN CHINA | VGA COOLER R580 <i>MEI PO#0008129</i> | 2,010 PCS | 15.800 | USD | 31,758.00 |
| | TOTAL : | 4,510 PCS | | USD | 71,258.00 |

SAY TOTAL US DOLLARS SEVENTY ONE THOUSAND TWO HUNDRED AND FIFTY EIGHT ONLY.

EVERMODULE TECHNOLOGY CORP.

(Authorized Signature)

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF VENTURA

3 I, the undersigned, declare that I am a resident of the County of Ventura, State of
4 California; I am over the age of 18 years and not a party to the within action; my business
5 address is 215 E. Daily Drive, Suite 9, Camarillo, California 93010.6 On January 25, 2008, I served the following document, REPLY BRIEF IN SUPPORT OF
7 APPLICATION FOR ORDER OF WRIT OF ATTACHMENT; DECLARATION OF PETER
8 CHIU, of which the original document, or a true and correct copy, is attached, by placing a
9 copy thereof in a separate envelope for each addressee named hereafter, addressed to each
10 such address respectively as follows:11 Mark R. Figueiredo, Esq.
12 Jonathan H. Van Ee, Esq.
13 STRUCTURE LAW GROUP, LLP
14 1754 Technology Dr, Suite 135
15 San Jose, CA 95110
16 (408) 441-7500
17 (408)228-8787
18 mrf@structurelaw.com
19 jve@structurelaw.com20 (BY MAIL) I deposited such envelope in the mail at Camarillo, California. The
21 envelope was mailed with postage thereon fully prepaid. Executed on **January
22 25, 2008.**23 (BY FACSIMILE) In addition to regular mail, I sent this documents via facsimile
24 to the above listed numbers.25 (BY PERSONAL SERVICE) Such envelope was delivered by HAND DELIVERY
26 to the office of the addressee. Executed on _____.27 (VIA CERTIFIED MAIL, RETURN RECEIPT) Such envelope was delivered via
28 certified mail, return receipt to all addressees listed on attached mailing list.
Executed _____.I declare under penalty of perjury under the laws of the State of
California that the above is true and correct.I declare that I am employed in the office of a member of the bar of
this Court at whose direction the service was made.I declare that I am readily familiar with the firm's practice of collection and
processing correspondence for mailing. It is deposited with the U.S. Postal Service on
that same day in the ordinary course of business. I am aware that on motion of party
served, service is presumed invalid if postal cancellation date or postage meter date is
more than one day after date of deposit for mailing in affidavit.

January 25, 2008, at Camarillo, California.

Sarah McEachern
(Print Name)
(Signature)